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SHAVER'S FARM

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

IN THE MATTER OF:

SHAVER'S FARM LANDFILL SITE  
WALKER COUNTY, GEORGIA

VELSICOL CHEMICAL CORPORATION,

Respondent

ADMINISTRATIVE ORDER ON  
CONSENT FOR REMOVAL ACTION

CERCLA Docket No. 95-4-C

Proceeding Under Section  
106(a) of the Comprehensive  
Environmental Response,  
Compensation, and Liability  
Act, as amended, 42 U.S.C. §  
9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Velsicol Chemical Corporation ("Respondent"). This Order provides for the performance of the removal action by Respondent and the reimbursement of future response costs incurred by the United States in connection with the property located approximately five miles north of Lafayette, Walker County, Georgia and one-half mile west of Pigeon Mountain at the terminus of Shaver's Road in Lafayette, Walker County, Georgia (the "Shaver's Farm Site"). This Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrator by EPA Delegation Nos. 14-14-A and 14-14-C and to the Director, Waste Management Division by EPA Region IV Delegation Nos. 14-14-A and 14-14-C.

EPA has notified the State of Georgia of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## III. FINDINGS OF FACT

For the purposes of this Order, EPA finds that:

1. On March 30, 1988, the Regional Administrator of EPA issued an Administrative Order by Consent under Section 106(a) of CERCLA, Docket No. 88-10-C, which was consented to by Respondent Velsicol Chemical Corporation. This Order was issued because of a release or threat of release of hazardous substances at the Shaver's Farm Landfill Site. Under this Order, Respondent Velsicol agreed to determine the extent of drum burial onsite, report to EPA, and remove and dispose of drums, unless EPA concluded this was unnecessary.
2. On November 8, 1989, a Modification to Administrative Order by Consent, Docket No. 88-10-C, was issued by EPA's Director of the Waste Management Division, with the consent of Respondent Velsicol. Under the Modification, Velsicol agreed to excavate drums and soil in the Suspected Drum Disposal Area until the combined soil concentrations of benzonitrile and benzoic acid were equal to or less than 25 parts per million by weight (ppm), and until the combined soil concentrations of dicamba and 3,6-dichlorosalicylic acid were equal to or less than 25 parts per million by weight (ppm). EPA assumed responsibility for disposal of excavated waste and materials which were not Velsicol's responsibility pursuant to the Modification. However, Respondent has now agreed to dispose of such waste and material under this Order.

3. In 1990, EPA temporarily took over the performance of the removal action. EPA completed the excavation of hazardous substances from the Suspected Drum Disposal Area, and placed these materials into temporary storage cells to stabilize site conditions and minimize the risk of continued release of hazardous substances into the environment.

4. Since 1990, Velsicol has maintained the cells, at the direction of EPA, pending the completion of the removal action. Maintenance includes operating the leachate recovery system and disposing of leachate from the cells.

5. In 1993, while arranging for disposal of leachate from the Cells pursuant to the 1988 administrative order, Velsicol sampled the leachate. Although EPA knows of no problems with the data collected by Velsicol, EPA did not take split samples, and EPA has not verified the quality of these data. The results of Velsicol's sampling, which showed the presence of hazardous substances in the leachate, are affixed as Attachment A hereto.

6. The purpose of this Order is to provide for the removal of the material in the Cells. The temporary storage cells will not indefinitely prevent future releases of hazardous substances to the environment. The removal activities in this Order are therefore necessary to protect the public health, welfare, and the environment.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

1. The Shaver's Farm Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. The contaminants found at the Site include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the Site as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the

environment. Factors that may be considered are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").

7. The actual or threatened release of hazardous substances at or from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal action required by this Order itself or retain (a) contractor(s) to perform the removal action. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within 30 days of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least 30 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself to do the removal action. If EPA disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within 20 days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent and qualifications within 20 days of EPA's disapproval.

Within 30 days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall

notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval.

EPA has designated Paul Peronard of the EPA-Region IV Emergency Response and Removal Branch as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at 345 Courtland St., NE, Atlanta, Georgia 30365. EPA and Respondent shall have the right, subject to the immediately proceeding paragraph, to change its designated OSC, Contractor, or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondent shall perform, at a minimum, the following removal action:

a. Respondent shall remove and arrange for the proper offsite disposal of the contents of Cell 1, Cell 2, and the bioremediation test cell (the "Cells"), and their liner systems. Any soil in the Cells that does not exceed the removal treatment standards of 25 parts per million of benzonitrile and benzoic acid (combined) or 25 parts per million of dicamba and 3,6-dichlorosalicylic acid (combined) may be left onsite. Soil is unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

b. Physical excavation of the Cells shall commence no later than May 1, 1995.

c. All areas impacted by on-site activity, including the Cells, processing or staging areas, and office locations shall be returned to the general grade that existed prior to construction of the Cells, using existing fill material onsite, and completely revegetated. All areas on-site used to hold, stage, or store any materials excavated from the Cells shall be left free of visual contamination.

d. All on-site removal activity and site restoration shall be completed by February 15, 1996.

### 2.1 Work Plan and Implementation

At least 60 days prior to the beginning of excavation, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the

actions required by this Order. The Work Plan will outline in detail the steps to be taken to complete the excavation of the cells and the proper disposal of their contents. The Work Plan shall contain at a minimum sections that adequately address the following:

- a) Overall project schedule
- b) Excavation
  - 1) Schedule
  - 2) Physical approach
  - 3) Shoring and sloping requirements
- c) Material staging
- d) General site and equipment layout
- e) Transport and disposal
- f) Sampling
  - 1) Waste characterization (including methodology for segregating soils below 25 ppm of benzonitrile and benzoic acid, combined, and soils below 25 ppm of dicamba and 3,6-dichlorosalicylic acid, combined, when applicable)
  - 2) Disposal profiling
  - 3) TCLP screening
  - 4) Quality assurance/quality control
- g) Site restoration
- h) Site and equipment decontamination
- i) Health and safety

Respondent has submitted a Field Sampling and Analysis Plan: Soil/Waste Characterization dated April 25, 1994. This plan partially fulfills the requirements of subparagraph (f) above. Subject to the making of the specific revisions set forth in EPA's comments previously provided to Respondent, EPA approves this sampling plan to cover part of the requirements of subparagraph (f) above. Any requirements of subparagraph (f) above which are not included in the April 1994 sampling plan shall be included in the Work Plan.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 10 working days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA-approved Work Plan. Respondent shall not commence or undertake any removal action on-Site without prior EPA approval.

## 2.2 Health and Safety Plan

Together with the Work Plan, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988 (but see latest version if different). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

## 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01, dated January 1990; "Compendium of ERT Procedures," OSWER Directives Numbered 9360.4-04 through 9360.4-08; and the "EPA Region IV Environmental Compliance Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA, Region IV Environmental Services Division, February 1, 1991.)

Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any

samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than 2 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

#### 2.4 Reporting

Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 10th day after the date of receipt of EPA's approval of the Work Plan until receipt of notice of completion pursuant to Section XXI, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice that the property is subject to this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent agrees to require that its successor comply with the immediately preceding sentence and Section Three - Access to Property and Information.

#### 2.5 Final Report

Within 60 days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation except for privileged documents generated during the removal action (e.g., manifests, proof of disposal, cost information, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I



am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

### 3. Access to Property and Information

Respondent shall provide, and/or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and provide access to all non-privileged records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Georgia representatives. These individuals shall be permitted to move freely on-Site and at appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year-period and 30 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. Except for privileged documents, Respondent shall provide documents and information retained under this section at any time before expiration of the ten-year period at the written request of EPA.

Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7).

Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege.

#### 5. Off-Site Shipments

All hazardous substances, pollutants, or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the Off-Site Rule, (58 Fed. Reg. 49200 (September 22, 1993)). EPA will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above regulation. If removed material does not fail the TCLP test, it can be disposed of at a RCRA Subtitle D landfill.

#### 6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

#### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to

the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at 404/347-3931, extension 6121, or, in the event of his/her unavailability, shall notify the National Response Center at (800)424-8802 or the EPA Region IV Hotline at (404) 347-4062 of the incident or Site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify EPA's OSC and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

#### VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### VII. REIMBURSEMENT OF COSTS

Respondent shall reimburse EPA for all future response costs, not inconsistent with the NCP, incurred by the United States. Future response costs are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC.

On a periodic basis, EPA shall submit to Respondent a bill for future response costs. Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
ATTENTION: Collection Officer for Superfund

Respondent shall simultaneously transmit a copy of the check to Carolyn McCall, U.S. Environmental Protection Agency - Region IV, 345 Courtland Street, Atlanta, GA 30365. Payments shall be designated as "Oversight Costs - Shaver's Farm Site" and shall reference the payor's name and address, the EPA site identification number (\_TGB04DPM5), and the docket number of this Order.

In the event that the payments for future response costs are not made within 30 days of the Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA. The interest for Respondent's failure to make timely payments on Future Response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 30 days after the dispute is resolved.

#### VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondent shall notify the OSC in writing of its objection(s) within 7 days of receipt of notice of such action, unless the objection(s) have been informally resolved.

EPA and Respondent shall within 15 days from EPA's receipt of the Respondent's written objections attempt to resolve the dispute

through formal negotiations (Negotiation Period). The negotiation period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

Any agreement reached by the parties pursuant to this section shall be in writing, signed by all parties, and shall upon the signature by all parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to the Respondent. The decision of EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the EPA decision regarding the dispute. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section.

Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

#### IX. FORCE MAJEURE

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify EPA orally within 24 hours after the event, and in writing within 5 working days after Respondent become or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.

If EPA determines a delay in performance of a requirement under

this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent fails to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

- (a) For failure to submit any reports or plans required by this Order, Respondent shall be liable in the amount of \$250 per day for the first week of violation or delay, and \$500 per day thereafter.
- (b) For failure to begin onsite work required by this Order by May 1, 1995, or for failure to complete such work by February 15, 1996, Respondent shall be liable in the amount of \$500 per day for the first week of violation or delay, and \$1,000 per day thereafter.

Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 30 days. Interest shall accrue on late payments as of the date of the violation or act of non-compliance triggering the stipulated penalties.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation(s) to complete the performance of the work required under this Order.

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

## XII. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither the United States nor EPA shall be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XIII - Covenant Not To Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XIX - Notice of Completion, EPA covenants not to sue Respondent for judicial

imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

#### **XIV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### **XV. INDEMNIFICATION**

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph.

#### **XVI. INSURANCE**

At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars (\$1,000,000), combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in



an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XVII. FINANCIAL ASSURANCE**

Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining, and presenting to EPA within thirty (30) days of the effective date of this Order, one of the following: (1) a surety bond guaranteeing performance of the Work; (2) one or more irrevocable letters of credit equalling the total estimated cost of the Work; (3) a guarantee to perform the Work by a third party; (4) a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f). In the event that Respondent can demonstrate to EPA's satisfaction that it is not feasible for Respondent to satisfy the requirements of items (1) through (4) of this paragraph, Respondent may satisfy the requirements of this paragraph by presenting internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than \$4,500,000. If Respondent seeks to demonstrate ability to complete the Work by means of internal financial information, or by guarantee of a third party, they shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such internal financial information is inadequate, Respondent shall, within thirty (30) days after receipt of written notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed above. Respondent's lack of ability to demonstrate financial ability to complete any aspect of the Work shall not excuse compliance with this Order or any term thereof.

#### **XVIII. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 10 days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by

this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XIX. NOTICE OF COMPLETION**

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

#### **XX. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent have sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### **XXI. EFFECTIVE DATE**

This Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

This Order shall be effective on the date it is signed by the Director of the Waste Management Division of EPA, Region IV.

The undersigned representative of Respondent Velsicol Chemical Corporation certifies that he or she is fully authorized to enter into the terms and conditions of the foregoing Order and to bind Velsicol Chemical Corporation to this document.

For Velsicol Chemical Corporation:

Agreed this 24th day of October, 1994.

By CR Hanson

Title Vice President ENVIRONMENTAL MANAGEMENT

It is so ORDERED and Agreed this 27th day of October, 1994.

Joseph Franzmathes  
Joseph Franzmathes  
Director, Waste Management Division  
United States Environmental  
Protection Agency - Region IV